

**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
SAN FRANCISCO SESSION  
MAY 30–31, 2006 AND JUNE 1–2, 2006  
(FIRST AMENDED)**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom, located at 350 McAllister Street, Fourth Floor, San Francisco, California, on May 30–31 and June 1–2, 2006.

**TUESDAY, MAY 30, 2006—1:00 P.M.**

- |     |         |   |
|-----|---------|---|
| (1) | S124494 | Dore v. Arnold Worldwide, Inc.  |
| (2) | S129476 | Smith v. Superior Court of Los Angeles County (L’Oreal USA, Inc., Real Party in Interest)                                       |
| (3) | S133850 | Pilimai v. Farmers Insurance Exchange Co.   |
| (4) | S022224 | People v. Stanley (Darren) [Automatic Appeal] ( <i>Corrigan, J. not participating; King, J., assigned justice pro tempore</i> ) |

**WEDNESDAY, MAY 31, 2006—9:00 A.M.**

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|-----|---------|--|
| (5) | S131798 | Californians for Disability Rights v. Mervyn’s |
| (6) | S132433 | Branick v. Downey Savings and Loan Assn.       |
| (7) | S126412 | Priebe v. Nelson                               |

**1:30 P.M.**

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|------|---------|--|
| (8)  | S128429 | Flatley v. Mauro                                     |
| (9)  | S126715 | Soukup v. Hafif } ( <i>consolidated for argument</i> |
| (10) | S126864 | Soukup v. Stock } <i>and decision</i> )              |
| (11) | S005502 | People v. Rogers (David) [Automatic Appeal]          |

**THURSDAY, JUNE 1, 2006—9:00 A.M.**

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|------|---------|--|
| (12) | S124739 | Kearney v. Salomon Smith Barney, Inc.                  |
| (13) | S131641 | Kibler v. Northern Inyo County Local Hospital District |
| (14) | S130860 | People v. Dominguez (Fernando)                         |

**1:30 P.M.**

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|------|---------|--|
| (15) | S127513 | S.B. Beach Properties v. Berti                                   |
| (16) | S126550 | People v. Cottle (Kevin Lamar)                                   |
| (17) | S033436 | People v. Lewis (Albert) and Oliver (Anthony) [Automatic Appeal] |

**FRIDAY, JUNE 2, 2006—9:00 A.M.**

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|------|---------|---|
| (18) | S127176 | People v. Pokovich (Charles)  |
| (19) | S133343 | Microsoft v. Franchise Tax Board ( <i>Chin and Corrigan, JJ., not participating; Huffman and Hull, JJ., assigned justices pro tempore</i> ) |
| (20) | S127086 | GM Corp. v. Franchise Tax Bd. ( <i>Chin and Corrigan, JJ., not participating; Huffman and Hull, JJ., assigned justices pro tempore</i> )    |

**1:30 P.M.**

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|------|---------|---|
| (21) | S131992 | Essex Insurance Co. v. Five Star Dye House, Inc.        |
| (22) | S124090 | People v. Garcia (Cathy Dawn)                           |
| (23) | S014394 | People v. Ledesma (Fermin Rodriguez) [Automatic Appeal] |

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GEORGE  
*Chief Justice*

If exhibits are to be transmitted to this court, counsel must comply with rule 18(c) of the California Rules of Court.

**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
SAN FRANCISCO SESSION  
MAY 30-31, 2006 AND JUNE 1-2, 2006**

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

**TUESDAY, MAY 30, 2006—1:00 P.M.**

***(1) Dore v. Arnold Worldwide, Inc., S124494***

#04-77 Dore v. Arnold Worldwide, Inc., S124494. (B162235; unpublished opinion; Superior Court of Los Angeles County; BC260637.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case includes the following issue: Is an employment contract that states, “your employment with [the employer] is at will” but also states, “[t]his simply means that [the employer] has the right to terminate your employment at any time” reasonably susceptible of the interpretation either that employment may be terminated at any time *without* cause or that employment may be terminated at any time but only *with* cause, permitting the introduction of extrinsic evidence on the issue of the proper interpretation of the contract?

***(2) Smith v. Superior Court of Los Angeles County (L’Oreal USA, Inc., Real Party in Interest), S129476***

#05-11 Smith v. Superior Court of Los Angeles County (L’Oreal USA, Inc., Real Party in Interest), S129476. (B176918; 123 Cal.App.4th 128; Superior Court of Los Angeles County; BC284690.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Where an employee’s employment terminates upon the completion of an agreed-upon period of employment or a specific task, has the employee been “discharged” within the meaning of Labor Code section 201 such that “the wages earned and unpaid at the time of discharge are due and payable immediately”?

***(3) Pilimai v. Farmers Insurance Exchange Co., S133850***

#05-151 Pilimai v. Farmers Insurance Exchange Co., S133850. (C047483; 127 Cal.App.4th 1093; Superior Court of Sacramento County; 03CS00611.) Petition for review after the Court of Appeal reversed a judgment confirming an arbitration award. This case presents the following issues: (1) Do the statutes providing for an award of costs and prejudgment interest to a prevailing party who obtains

a judgment in excess of a statutory offer to compromise (Civ. Code, § 3291; Code Civ. Proc., § 998) apply to arbitration proceedings on claims for uninsured or underinsured motorist benefits? (2) If so, can the costs and prejudgment interest, together with the compensatory damages awarded, exceed the insured's policy limits?

***(4) People v. Stanley (Darren) (Corrigan, J., not participating; King, J., assigned justice pro tempore), S022224 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

**WEDNESDAY, MAY 31, 2006—9:00 A.M.**

***(5) Californians for Disability Rights v. Mervyn's, S131798***

#05-93 Californians for Disability Rights v. Mervyn's, S131798. (A106199; 126 Cal.App.4th 386; Superior Court of Alameda County; 2002-051738.) Petition for review after the Court of Appeal denied a motion to dismiss an appeal from the judgment in a civil action. This case presents the following issue: Do the provisions of Proposition 64 (Gen. Elec. (Nov. 2, 2004)) that limit standing to bring an action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) to "any person who has suffered injury in fact and has lost money or property as a result of such unfair competition" (Bus. & Prof. Code, § 17204, as amended) apply to actions pending when the provisions of the proposition became effective on November 3, 2004?

***(6) Branick v. Downey Savings & Loan Assn., S132433***

#05-94 Branick v. Downey Savings & Loan Assn., S132433. (B172981; 126 Cal.App.4th 828; Superior Court of Los Angeles County; BC280755.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issue: If the standing limitations of Proposition 64 apply to actions under the Unfair Competition Law that were pending on November 3, 2004, may a plaintiff amend his or her complaint to substitute in or add a party that satisfies the standing requirements of Business and Professions Code section 17204, as amended, and does such an amended complaint relate back to the initial complaint for statute of limitations purposes?

***(7) Priebe v. Nelson, S126412***

#04-99 Priebe v. Nelson, S126412. (A101630; 119 Cal.App.4th 235; Superior Court of Humboldt County; DR010121.) Petition for review after the Court of Appeal affirmed an order granting a new trial in a civil action. This case includes the following issue: Does the doctrine of primary assumption

of risk, as embodied in the so-called “veterinarian’s rule,” preclude a kennel worker who is bitten by a dog from suing the dog’s owner under Civil Code section 3342?

**1:30 P.M.**

***(8) Flatley v. Mauro, S128429***

#04-146 Flatley v. Mauro, S128429. (B171570; 121 Cal.App.4th 1523; Superior Court of Los Angeles County; BC291551.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike. This case presents the following issue: When a plaintiff files a cause of action based upon illegal conduct (e.g., extortion) allegedly engaged in by the defendant in relation to prior litigation, is the plaintiff’s action subject to a special motion to strike under the anti-SLAPP statute (Code Civ. Proc., § 425.16)? Related issues are before the court in *Soukup v. Stock*, S126864 (#04-118), and *Soukup v. Hafif*, S126715 (#04-119).

***(9) Soukup v. Hafif, S126715 and (10) Soukup v. Stock, S126864 (consolidated for argument and decision)***

#04-119 Soukup v. Hafif, S126715. (B152759, B154311, B154184; unpublished opinion; Superior Court of Los Angeles County; BC247941.) Petition for review after the Court of Appeal reversed orders denying special motions to strike.

#04-118 Soukup v. Stock, S126864. (B154311; 118 Cal.App.4th 1490; Superior Court of Los Angeles County; BC247941.) Petition for review after the Court of Appeal reversed an order denying a special motion to strike.

*Hafif* and *Stock* have been consolidated for argument and decision and include the following issue: Is a cause of action for malicious prosecution subject to a special motion to strike under the anti-SLAPP statute (Code Civ. Proc., § 425.16) if the underlying action that allegedly was maliciously prosecuted was itself dismissed pursuant to a special motion to strike under that statute?

***(11) People v. Rogers (David), S005502 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

**THURSDAY, JUNE 1, 2006—9:00 A.M.**

***(12) Kearney v. Salomon Smith Barney, Inc., S124739***

#04-70 Kearney v. Salomon Smith Barney, Inc. S124739. (A101477; 117 Cal.App.4th 446; Superior Court of San Francisco County; 412197.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Can a claim for violation of the

Invasion of Privacy Act (Pen. Code, § 630 et seq.) or the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) be premised on the recording of a telephone call without the consent of all parties to the conversation (see Pen. Code, § 632) where the telephone call in question is between California and a state that requires the consent of only one party to the conversation and the call is recorded in the other state?

**(13) *Kibler v. Northern Inyo County Local Hospital District*, S131641**

#05-95 Kibler v. Northern Inyo County Local Hospital District, S131641. (E035085; 126 Cal.App.4th 713; Superior Court of Inyo County; CVCV02-32216.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Is an action arising out of the hospital peer review mandated by Business and Professions Code section 809(a)(8) subject to a special motion to strike under the anti-SLAPP statute because such review is an “official proceeding” or implicates a public issue or issue of public interest within the meaning of Code of Civil Procedure section 425.16(e)(2) and (4)?

**(14) *People v. Dominguez (Fernando)*, S130860**

#05-75 People v. Dominguez (Fernando), S130860. (H022727; 124 Cal.App.4th 1270; Superior Court of San Benito County; CRF99-37033.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case includes the following issues: (1) Did the trial court adequately instruct the jury with respect to the liability of an aider and abettor for felony murder under the principles of *People v. Cavitt* (2004) 33 Cal.4th 187? (2) Was the evidence sufficient to establish the asportation element of aggravated kidnapping for the purpose of rape? (3) Did the trial court have a sua sponte duty to instruct the jury pursuant to *People v. Mayberry* (1975) 15 Cal.3d 143, with respect to a reasonable and good faith belief the victim had consented to engage in sexual intercourse?

**1:30 P.M.**

**(15) *S.B. Beach Properties v. Berti*, S127513**

#04-124 S.B. Beach Properties v. Berti, S127513. (B168950; 120 Cal.App.4th 1001; Superior Court of Santa Barbara County; 01110911.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issue: Does a trial court have jurisdiction to consider a motion for attorney fees under Code of Civil Procedure section 425.16 if the action was voluntarily dismissed before the special motion to strike was filed?

**(16) *People v. Cottle (Kevin Lamar)*, S126550**

#04-105 *People v. Cottle (Kevin Lamar)*, S126550. (C043594; 119 Cal.App.4th 745; Superior Court of Sacramento County; 02F03971, 96F09935.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. The case presents the following issue: Where relevant new information was disclosed after the 12 regular jurors had been sworn but before the alternate jurors had been sworn, did the trial court err in denying defendant's request to reopen the jury selection process to permit the exercise of a peremptory challenge to one of the original 12 jurors?

**(17) *People v. Lewis (Albert) and Oliver (Anthony)*, S033436 [Automatic Appeal]**

This matter is an automatic appeal from a judgment of death.

**FRIDAY, JUNE 2, 2006—9:00 A.M.**

**(18) *People v. Pokovich (Charles)*, S127176**

#04-115 *People v. Pokovich (Charles)*, S127176. (C043253; 120 Cal.App.4th 436; Superior Court of Shasta County; 02F2465.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: May a defendant be impeached at trial with statements made during a compelled competency examination?

**(19) *Microsoft v. Franchise Tax Board (Chin and Corrigan, JJ., not participating; Huffman and Hull, JJ., assigned justices pro tempore)*, S133343**

#05-120 *Microsoft v. Franchise Tax Board*, S133343. (A105312; unpublished opinion; Superior Court of San Francisco County; 400444.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) In calculating the proportion of a unitary business group's income that is subject to California income tax under the Uniform Division of Income for Tax Purposes Act (Rev. & Tax. Code, § 25101 et seq.), are the "gross receipts" of sales of securities measured by the total sales price (including return of principal) or the net proceeds (not including return of principal)? (2) If "gross receipts" includes the return of principal, can the Franchise Tax Board exclude that amount in order to effect an equitable apportionment that fairly represents the taxpayer's business activity in California?

**(20) *GM Corp. v. Franchise Tax Bd. (Chin and Corrigan, JJ., not participating; Huffman and Hull, JJ., assigned justices pro tempore)*, S127086**

#04-113 *General Motors Corp. v. Franchise Tax Bd.*, S127086. (B165665; 120 Cal.App.4th 114; Superior Court of Los Angeles County; BC269404.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issues: (1) In calculating the proportion of a unitary business group's income that is subject to California income tax under the

Uniform Division of Income for Tax Purposes Act (Rev. & Tax. Code, § 251310 et seq.), are the “gross receipts” of sales of securities measured by the total sales price (including return of principal) or the net proceeds (not including return of principal)? (2) Is the credit allowed a taxpayer for research expenses available to offset the tax liability of any member of a unitary business group or is the credit available only with respect to the tax liability of the particular corporate member of the group that incurred the expense?

**1:30 P.M.**

**(21) *Essex Insurance Co. v. Five Star Dye House, Inc.*, S131992**

#05-103 *Essex Insurance Co. v. Five Star Dye House, Inc.*, S131992. (B167295; 125 Cal.App.4th 1569; Superior Court of Los Angeles County; BC156517.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court limited review to the following issue: Can an insured assign its right under *Brandt v. Superior Court* (1985) 37 Cal.3d 813, to recover the attorney fees that are incurred in order to obtain insurance policy benefits that the insurer denied in bad faith?

**(22) *People v. Garcia (Cathy Dawn)*, S124090**

#04-65 *People v. Garcia (Cathy Dawn)*, S124090. (C043590; 117 Cal.App.4th 88; Superior Court of Butte County; CM015310.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: Does collateral estoppel bar a criminal prosecution for welfare fraud and perjury where an administrative law judge has previously determined that the same welfare overpayments forming the basis of the criminal complaint were made because of administrative errors by the county welfare department? (See *People v. Sims* (1982) 32 Cal.3d 468.)

**(23) *People v. Ledesma (Fermin Rodriguez)*, S014394 [Automatic Appeal]**

This matter is an automatic appeal from a judgment of death.